

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 85-0489-RGS

UNITED STATES OF AMERICA,

Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION, et al.,

Defendants.

CIVIL ACTION NO. 83-1614-RGS

CONSERVATION LAW FOUNDATION OF NEW ENGLAND, INC.,

Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION,

Defendant.

SCHEDULE SEVEN COMPLIANCE ORDER NUMBER 226

January 3, 2013

STEARNS, D.J.

This is the two hundred and twenty-sixth Compliance Order that has issued in this litigation. On December 14, 2012, the Massachusetts Water Resources Authority (MWRA) filed its Quarterly Compliance and Progress Report. The United States has indicated that it will not file a response.

I. Schedule Seven

Frederick A. Laskey, Executive Director of the MWRA, has filed a Certificate of Completed Activities, dated December 14, 2012.

A. Activities Completed

1. Commencement of CAM004 Sewer Separation Project

The MWRA reports that on September 29, 2012, the City of Cambridge issued the Notice to Proceed with Contract 8A (Huron A), the first of three contracts that will comprise the CAM004 sewer separation project. Huron A, a \$15.4 million contract, involves the installation of approximately 13,150 linear feet of sanitary sewer and storm drain up to 54 inches in diameter along Huron Avenue and several intersecting streets. An additional 7,200 feet of smaller drain pipe will be installed for connections between Fresh Pond and Brattle Street. Finally, the project includes the construction of three large storm drain vaults on Vassal Lane, the building of 45 new or replacement catch basins, the removal of stormwater inflows from existing lateral sewer connections, and the installation of 6,700 linear feet of replacement 6 to 12 inch water main pipe.

Cambridge has incorporated “Green Technologies” into Huron A to improve stormwater quality. The undertaking includes the laying of 8,500 linear feet of porous pavement, the construction of six “bio basins”¹ with overflow connections to the storm drain system, and the planting of 145 new trees. Pre-construction activities began in September of 2012. The MWRA reports that Cambridge expects Huron A to be substantially completed by May of 2014, with surface restoration work to be done by December of 2014.

¹ Bio basins are planted areas that intercept and detain street runoff, thus capturing a portion of sediments and other pollutants, such as phosphorous and nitrogen. Bio basins also assist in reducing the rate and volume of stormwater runoff to the master drainage system.

B. Progress Report

1. Combined Sewer Overflow (CSO) Program

a. Brookline Sewer Separation

The MWRA reports that the Town of Brookline has substantially completed the second of its two sewer separation projects (the first of which was finished in January of 2010). This \$16.6 million project, known as Phase II, involves the installation of 3,790 linear feet of storm drain and 1,290 linear feet of sanitary sewer using the open trench method, and an additional 4,550 linear feet of sanitary sewer by means of micro-tunneling. It also involves the construction of several large structures to connect the new Town sewers to existing lateral sewers and the MWRA's interceptor system.

The MWRA reports that the installation of the main line storm drains and sewers and connections has been completed. The remaining work includes the installation of building service connections to the new sewers, the cleaning of former combined sewers that have been converted to storm drains, the identification and removal of illicit connections, the creation of a new service connection to a building owned by Boston University, modifications to the existing CSO regulator to allow outfall MWR010 to convey separated stormwater to the Charles River Basin, and surface restoration. According to the MWRA, Brookline anticipates completion of Phase II by early 2013, well ahead of the July 2013 milestone.

The MWRA additionally reports, as noted in previous Orders, that the removal of sediments from CSO outfall MWR010 is substantially complete. The cleaning will ensure that the outfall has adequate hydraulic capacity to convey Brookline's separated stormwater to the Charles River Basin, as well as smaller volumes of Boston Water and

Sewer Commission (BWSC) and Boston University stormwater (and occasional CSO discharges from the Charles River Valley Sewer and the local BWSC combined sewers).

b. Reserved Channel Sewer Separation

According to the MWRA, the BWSC continues to make progress on the remaining three contracts that comprise the \$64.3 million Reserved Channel sewer separation project. In October of 2012, the BWSC issued the notice to proceed with Contract 4, a \$9.1 million project involving sewer separation in 182 acres in the area tributary to outfalls BOS076, BOS078, and BOS079. In addition, the \$9.9 million Contract 3A was substantially completed during the past quarter, with work focused in the areas of West First Street, G Street, West Broadway, and E Street in South Boston. Contract 3A involves the installation of 9,000 linear feet of storm drain, 3,375 linear feet of sanitary sewer, 8,650 linear feet of replacement water main, and 22 new storm drain catch basins. In addition, 76 existing catch basins were connected to the new storm drain. Contract 3B, a \$10.9 million project in the areas of East First Street, N Street, East Third Street, and Dorchester Avenue, as well as Elkins and Summer Streets, achieved 45% completion in the last quarter. This project, which is expected to be substantially complete by December of 2014, involves the installation of 10,730 linear feet of storm drain, 4,240 linear feet of sanitary sewer, 10,900 linear feet of replacement water main, and 14 new storm drain catch basins. In addition, 120 existing catch basins will be connected to the new storm drain.

Also in October of 2012, the BWSC issued the notice to proceed with Contract 8, a \$6.8 million pavement restoration project that will be undertaken as sections of sewer separation work are completed. The MWRA reports that design work for the remaining

sewer cleaning and downspout disconnection projects is underway, and that the entire Reserved Channel sewer separation project remains on track for completion by December of 2015, in compliance with Schedule Seven.

- c. Control Gate and Floatables Control at Outfall MWR003 and MWRA Rindge Avenue Siphon Relief and Interceptor Connection Relief and Floatables Control at Outfall SOM01A

The MWRA reports that it continues to make progress on these last two of six projects that comprise the Alewife Brook CSO plan. The MWRA received a final preliminary design report for the SOM01A improvements, and is working with its engineering consultant on incorporating recommendations into the ongoing modeling and project design (including the enlargement from 24 to 36 inches of the connection between Somerville's Tannery Brook Conduit and the MWRA's Alewife Brook interceptor).

The MWRA reports that its consultant began the hydraulic modeling of design alternatives for extreme storm capacity enhancement of the Rindge Avenue siphon and outfall MWR003 in November of 2012. The MWRA expects to report the results of the modeling, as well as recommended design improvements, during the next quarter.

- d. CAM004 Sewer Separation

The MWRA reports that a number of issues have arisen with respect to the budget and scheduling associated with the CAM004 sewer separation project. In addition to the Huron A project noted above, the CAM004 sewer separation project consists of Contract 8B (Huron B), which involves the construction of new sanitary sewers and storm drains along Huron Avenue and several intersecting streets, and Contract 9, which involves the construction of new sanitary sewers and storm drains along Concord Avenue and intersecting streets.

The MWRA reports that in October of 2012, the City of Cambridge notified the MWRA that its revised estimate for the portion of the CAM004 sewer separation project that is eligible for MWRA funding is \$30 million higher than the initial estimate of \$58 million. (Cambridge has estimated its own share of the project at \$90 million). The MWRA notes that an increase of this magnitude in the Capital Improvement Program Budget would have a “meaningful impact” on its capital spending plan for wastewater and water projects.

With respect to scheduling, Cambridge informed the MWRA that because of traffic-related concerns, it did not expect to achieve substantial completion of Contract 9 by the December 2015 milestone. Cambridge voiced concern over construction-related impediments to the flow of traffic on Huron and Concord Avenues, as well as the cumulative impact that the construction will have on Fresh Pond Parkway, Alewife Brook Parkway, and other key routes between Cambridge and points west. Cambridge initially proposed that Contract 9 be delayed to eliminate any overlap between the Huron Avenue and the Concord Avenue projects.

The MWRA directed Cambridge to identify alternatives that would minimize any delay in the completion of the projects. In response, Cambridge agreed to adhere to the existing date of December of 2015, in compliance with Schedule Seven, and that to do so, it would focus on accelerating its efforts in: (1) the design of Contract 9; (2) the sequencing, coordination, and management of multiple construction contracts and crews (including the coordination of private utility work); (3) the phasing and sequencing of work to manage sewer and storm drain flows during construction; and (4) the management of local impact on traffic, homes, businesses, and schools.

According to the MWRA, Cambridge now expects to begin construction on Huron B by July of 2013, and to begin design work on Contract 9 by January of 2013, that is, one year ahead of schedule. Under Cambridge's preliminary revised schedule, work on Huron B will overlap with construction on Concord Avenue, which is now slated to begin in January of 2014. During a December 2012 meeting between the MWRA and Cambridge, the City indicated that its ability to meet the December 2015 milestone is contingent on a number of design, construction, and construction impact mitigation considerations. The MWRA reports that it will continue to work with Cambridge to meet the scheduled completion date.

e. CAM004 Stormwater Outfall and Detention Basin

The MWRA reports that this project, also known as Contract 12, is now 85% complete. During the last quarter, the contractor completed the excavation and grading of the main basin, as well as the vegetative plantings (the hand-pulling of invasive plant growth is ongoing). The contractor is currently in the process of constructing the pedestrian overlook at the oxbow area, the boardwalks that will access the basin, and the grading of the multi-use path that will become part of the Massachusetts Highway Department's new bikeway system.

The MWRA reports that there has been a delay in the private utility relocation work along Wheeler Avenue, which is a necessary step in the process of installing the new stormwater outfall conduit. After the City of Cambridge was unable to secure a definitive schedule from Verizon for completion of the work, which involves the relocation of data services, the MWRA convened a meeting with senior Verizon representatives and the City of Cambridge. According to the MWRA, Verizon

acknowledged the importance of complying with the court's schedule, but stated that the need to obtain signed releases from business owners along Wheeler Street had delayed the utility work. The MWRA reports that the relocation of utility poles on one side of Wheeler Street to a newly installed trunk line on the opposite side of the street is now scheduled to take place on January 15, 2013. The MWRA notes that even if the relocation is accomplished as currently planned, Cambridge will be unable to meet the April 2013 milestone for completion of this project. Although Cambridge is working with its contractor to mitigate the potential for delay, the MWRA reports that the project may not be completed until May of 2013.

f. South Dorchester Bay Inflow Removal

As previously noted, the BWSC has detected numerous locations of stormwater inflow into sanitary sewers, and it is currently sealing locations that can be eliminated with trenchless methods. According to the MWRA, the BWSC expects to advertise for the relocation of 17 catch basin connections from the sanitary sewers to existing storm drains in January of 2013.

II. Comments

While the court is pleased with the continued progress on most projects in the past quarter, it is concerned about the prospect of impending delays in the completion of the CAM004 sewer separation project. Moreover, a \$30 million increase in the MWRA's Capital Improvement Program budget will likely have a negative impact on other crucial projects. The City of Cambridge is expected make every effort it can to reduce costs. In addition, the court is concerned about the potential for delay in the completion of the Huron B and Concord Avenue projects. The court understands the complexity of these

projects and the need of avoiding any unnecessary disruption of traffic along Huron and Concord Avenues, both of which are heavily traveled, as well as on Fresh Pond Parkway and the Alewife Brook Parkway, which are major commuter arteries. The court encourages the MWRA and the City of Cambridge to continue to explore methods and means for achieving substantial completion in compliance with Schedule Seven that are consistent with the avoidance of any unnecessary public inconvenience while keeping within the parameters of the court's previous orders.

ORDER

The parties are ordered to report to the court as previously scheduled.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE